



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 16, 2003

Ms. Leah Curtis Morris  
Curtis, Alexander, McCampbell & Morris  
P. O. Box 1256  
Greenville, Texas 75403-1256

OR2003-4125

Dear Ms. Morris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182812.

The City of Greenville (the "city"), which you represent, received a request for six categories of information pertaining to GEUS for specified time intervals and the most recent demographics study conducted by the city. You state that you have released some responsive information to the requestor. You also state that some responsive information does not exist.<sup>1</sup> You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.133 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the city did not submit any responsive information to us pertaining to the requested demographic study. We, therefore, presume that the city has already provided the requestor with this information to the extent that it exists. If not, the city must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

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<sup>1</sup> We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See Gov't Code §§ 552.002, .021, .227, .351.* The Act does not require a governmental body to prepare new information in response to a request. *See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); Economic Opportunities Dev. Corp. of San Antonio v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).* A governmental body must only make a good faith effort to relate a request to information which it holds. *See Open Records Decision No. 561 at 8 (1990).*

Section 552.133 excepts from disclosure information held by a public power utility that is related to a competitive matter. *See* Gov't Code § 552.133(b). Section 552.133(a)(3) defines "competitive matter" as a matter that the public power utility governing body determines by a vote in good faith to be related to the public power utility's competitive activity and which, if disclosed, would give advantage to competitors or prospective competitors. *See id.* § 552.133(a)(3). However, section 552.133(a)(3) also provides that thirteen categories of information may not be deemed to be competitive matters. *See* Gov't Code § 552.133(a)(3). The attorney general may conclude that section 552.133 is inapplicable to requested information only if, based on the information provided, he determines that the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. *See id.* § 552.133(c).

Furthermore, section 552.133(b) provides:

Information or records are excepted from [required public disclosure] if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.133(b).

We find that the copy of "Resolution 03-21" that you submitted to us for review constitutes a resolution of the city as governing body of a municipal utility determining issues, activities, or other matters which constitute "competitive matters." We also find that we have no evidence to conclude that the city failed to act in good faith in adopting this resolution and that the adopted competitive matters in that resolution are not clearly among the list of thirteen categories of information that are expressly excluded from the definition of "competitive matter" in section 552.133(a)(3). Finally, we find that the submitted information is reasonably related to competitive matters as adopted in "Resolution 03-21." Accordingly, based on our review of your arguments and the submitted information, we conclude that the city must withhold the submitted information pursuant to section 552.133 of the Government Code.

In summary, the city must release the requested demographic study to the requestor to the extent that it exists and the city has not already done so. The city must withhold the submitted information pursuant to section 552.133 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

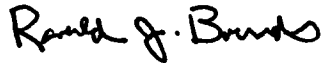
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 182812

Enc. Submitted documents

c: Ms. Angela Ticknor  
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(w/o enclosures)